

decUNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No. 5:14-CV-60-FL

TIMOTHY P. DANEHY,)

)

Plaintiff,)

)

vs.)

)

JAFFE & ASHER, LLP, LAWRENCE)
M. NESSENSON and WILLIAM J.)
ALLEN)

)

Defendants.)

)

**DECLARATION OF WILLIAM J. ALLEN
IN REPLY TO PLAINTIFF'S NOTICE OF
OBJECTION TO MAGISTRATE'S
MEMORANDUM AND
RECOMMENDATION**

WILLIAM J. ALLEN declares, under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I submit this declaration on behalf of the Defendants in reply to the Plaintiff's Notice of Objection To Magistrate's Memorandum and Recommendation "Notice of Objection" and to the affidavit of Plaintiff ("Affidavit") which accompanied the Notice of Objection.

2. I am a Defendant in the instant action and counsel of record for all Defendants.

3. I do not wish to burden the Court with a point by point rebuttal of the objections filed by the Plaintiff in which he takes issue with just about every finding made by the Magistrate. Suffice it to say that Defendants agree with the Magistrate's recommendation and urge that the Court dismiss the Complaint with prejudice for the reasons set forth in the Magistrate's ruling, and

in the papers in support of Defendants' motion to dismiss the Complaint.

4. Rather, I would like to take this opportunity to briefly demonstrate that Plaintiff is being dishonest with the Court and that his most recent filing is untruthful.

5. Plaintiff states in his Affidavit at page 2, fifth and sixth bullet points, that:

- "Affiant never had an AMERICAN EXPRESS BANK FSB account number ending with 7-71001" and
- "Affiant never had an American Express Bank FSB account ending with 1001."

Plaintiff refers to these sworn statements in the Notice of Objection, stating in paragraph 4 that there was no permissible purpose for pulling his credit report because "...Plaintiff never had an American Express account ending in *****1001 or *7-7001." These assertions by Plaintiff are demonstrably untrue.

6. Annexed hereto as Exhibit A is the Civil Cover Sheet filed by Plaintiff in this action setting forth his address of 555 Julian Smith Road, Henderson, NC 27537. Plaintiff also uses this same address at the signature line of the Complaint.

7. I conducted searches of the Vance County real property tax records and on Westlaw and Lexis to confirm Plaintiff's mailing address. Annexed hereto as Exhibit B is the result of a real property tax records search of Vance County, North Carolina showing that Timothy P, Danehy and Lynn Danehy own property together in Vance County and that their mailing address is listed as being 555 Julian Smith Road, Henderson, NC 27537. See also the Westlaw real property tax assessor records search annexed as Exhibit C, to the same effect, showing that Plaintiff has been using the 555 Julian Smith Road mailing address since prior to 2009. Also, a Lexis skip trace search, annexed as Exhibit D (portions redacted for privacy) shows that Plaintiff has an address at

555 Julian Smith Road, Henderson, NC since 2006, as well as two PO Boxes in Kittrell, NC (one of which PO Box addresses also appears in the signature line of the Complaint in this action). There can be no doubt that Timothy and Lynn Danehy (believed to be Plaintiff's spouse) have a mailing address at 555 Julian Smith Road, Henderson, NC 27537.

7. On September 27, 2012, Plaintiff wrote to American Express. A copy of his letter (portion redacted for privacy) which I obtained from American Express and of his certified mail envelope in which the letter was transmitted is attached hereto as Exhibit E. The letter was sent from 555 Julian Road, Henderson NC. The letter expressly and specifically refers to the American Express account ending 7-71001 (the account that plaintiff denies having). It is written in response to Plaintiff having received a letter from American Express regarding terms and conditions of the account in question. Rather than denying that he was the holder of such account ending 7-71001, Plaintiff instead advises American Express that he will not agree to the new terms and conditions that were sent to him in that he did not want to be contacted by cell phone. Plaintiff goes on in that letter to say that American Express can contact him by other lawful means, but cannot contact him by cell phone.

8. Annexed hereto as Exhibit F is (i) the initial account statement from June 2007 for the subject American Express account ending with 7-71001, the very account Plaintiff denies ever having, and (ii) examples of several other account statements for this account, ending 7-71001, at various times through March 2013 when the last account statement was issued. A review of the attached statements shows that they were addressed to Plaintiff at 555 Julian Smith Road,

Henderson NC, that charges were incurred and payments were being made and that a supplemental account was issued to Plaintiff's spouse, Lynn Danehy, on which charges were incurred.¹

9. The incontrovertible evidence shows that Plaintiff opened an American Express Account in his name in 2007 having an account number ending 7-71001, used it and paid it for five years, that account statements for the 7-71001 account were sent to his known address regularly during this period and that he wrote to American Express in 2012 specifically referring to the account ending 7-71001 in order to make sure he was contacted by means other than his cell phone regarding this account.

10. Given the foregoing, Plaintiff's affidavit testimony that he never had an American Express account ending 7-7100 is simply not true. Accordingly, his Notice of Objection should be disregarded and the Magistrate's recommendations approved.

Dated: March 4, 2015

Respectfully submitted,

/s/ William J. Allen
William J. Allen
Attorney for Defendants
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¹ All of the monthly account statements from June 2007 through March 2013 are available for review if the Court so wishes, but they are quite voluminous, so they are not presented here in full. For a period of time during the tenure of the account, the address was changed to PO Box 178 Kittrell, NC, one of the PO Box addresses associated with Plaintiff (see Exhibit D), but was changed back to the 555 Julian Smith Road address in February 2011, where it remained until the account was cancelled approximately two years later.

Certificate of Service

I, William J. Allen, hereby certify that on this date I served the foregoing **DECLARATION OF WILLIAM J. ALLEN IN REPLY TO PLAINTIFF'S NOTICE OF OBJECTION TO MAGISTRATE'S MEMORANDUM AND RECOMMENDATION** upon all interested parties by depositing copy thereof in the United States mail in Matthews, North Carolina, first class postage prepaid and addressed as follows:

Timothy P. Danehy
PO Box 301
Kittrell, NC 27544-0301

This the 4th day of March, 2015.

/s/ William J. Allen
William J. Allen
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